IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.508 OF 1997

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Dr.Dilip N. Mahadik ...Petitioner

v/s.

1.Akhtar Rizvi & ors. ...Respondents

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Mr.S.J.Deshmukh i/b N.M.Ganguli for the Petitioner.

Mr.G.S.Hegde with Mr.M.J.Shetty for Respondents Nos. 1 & 2.

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CORAM: D.K.DESHMUKH, J.

DATED: 5TH JULY, 2006

P.C.:

1. By this petition the Petitioner challenges the order passed by the Presiding Officer, University and College Tribunal dated 24-12-1996. That order was passed in Appeal No.20 of 1995. That appeal was filed by the present Petitioner, under the provisions of Section 50 of the Maharashtra Universities Act. In that appeal the Petitioner challenged the order dated 21-6-1995 served on him on 29-6-1995 dismissing him from service. The order of dismissal was made consequent upon holding a departmental inquiry against the Petitioner. Before dismissal from service, the Petitioner was working as full time Lecturer in Zoology in the college of the Respondents from 20-6-1987. During the pendency of the departmental inquiry the Petitioner was placed under suspension with effect from 20-6-1995. A charge sheet was served on the Petitioner. Charges levelled against the Petitioner which have been held to be proved mostly related to his conduct as an examiner during the examination held during the year 1991-92. The College Tribunal in its exhaustive and detail

order has referred to the facts which lead to the departmental inquiry and has considered charges levelled against the Petitioner in detail. Perusal of the order of the Tribunal shows that the Tribunal has considered each of the charges that were levelled against the Petitioner. Perusal of the judgment of the College Tribunal shows that charges that are found to have been proved against the Petitioner are relating to utter negligence in assessing the answer-books of the examination which appears to be the examination held by the University through the college. In paragraph 40 of the order, the College Tribunal has noted that so far as allegation relating to examination are concerned, the Petitioner has accepted the lapses committed by him. The lapses, which according to the College Tribunal have been accepted by the Petitioner in relation to the examination, include not signing the answer-books, allotting marks to a student who was absent for the papers, mentioning wrong marks on the first page of the answer-book, etc. The lapses are many. The College Tribunal has found that the Petitioner has not carried out his work as an examiner diligently and he was negligent in the performance of his duties. The College Tribunal has also considered the

submissions made on behalf of the Petitioner that as these lapses are found to have been committed by the Petitioner while working as an examiner in the examination conducted by the University and as the University has laid down rules, which is a Code complete in itself for the conduct of the examination as also for imposing punishment on the examiner the management can not impose punishment. The College Tribunal has,however, found that though the lapses are committed by the teacher concerned, while working as an examiner, the Management can still punish him for the same lapses because he is appointed as an examiner basically because he is a teacher. The College Tribunal has referred to provisions of various statutes on the subject. The College Tribunal has also considered the question whether the punishment imposed can be termed as excessive or it is commensurate with the misconduct of which the Petitioner has been found to be guilty.

2. The learned Counsel appearing for the Petitioner referred to various provisions of the Bombay University Act and submitted that power to conduct examination has been conferred by the University Act

on the Bombay University. He submits that power to frame statute is also conferred on the University and in exercise of those powers the University has framed various statutes for the purpose of conducting examination. The learned Counsel referred to the Rules for conducting of First Year and Second Year B.A., B.Com. B.Sc. examinations by the constituent College of Arts, Science and Commerce. He also submits that the University has framed detail rules in relation to the conduct of these examinations, which include the rules providing for appointment of examiner, how question-papers are got set by the teacher, how examination is to be conducted and how the answer-books are to be got evaluated. The learned Counsel submits that the University has made detail provision as to what punishment is to be imposed on an examiner, if he is found to have not carried out his duty as examiner properly. The learned Counsel submits that power is vested in the Rules on the University to impose various types of punishment for various types of misconduct committed by the examiner concerned. According to the learned Counsel that because holding of examination is a job entrusted to the University by statute and the University in exercise of its power confer on it by

the University Act framed various sub-ordinate legislation for the conduct of that examination and has made a detailed provision therein for imposition of various penalties for various different kinds of lapses committed by the examiner, the College Management does not have the power to take action against the concerned examiner, who happens to be an employee of that College, for his acts of negligence etc. as an examiner.

3. The learned Counsel relies on the judgment of the Supreme Court in the case of A.L.Kalara v/s. The Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361 to contend that when an employee is to be punished for a misconduct, firstly that misconduct should be clearly spelt out in the service rules and secondly that misconduct should be clearly spelt out in the charge sheet that is served on the employee. On the basis of vague allegation made against an employee, an employee cannot be punished. The learned Counsel also relies on the judgment of the Supreme Court in the case of Rasiklal Vaghajibhai Patel v/s Ahamadabad Municipal Corporation , AIR 1985 SC 504. The learned Counsel relying on these judgments submits that any vague or undefined act

which from the employer point of view may be misconduct, but for that an employee cannot be punished unless such act is defined as misconduct in the relevant service rules. The learned Counsel also relies on the judgment of the Supreme Court in the case of Punjab Land Development and Reclamation Corporation Ltd. Chandigarh v/s. Presiding Officer, Labour Court, Chandigarh and ors, (1990) 3 SCC 682, to contend that any judgment to operate as precedent has to be read as a whole and only the question which has been decided by that judgment constitutes a ratio of the judgment and any casual observations made in that judgment do not constitute ratio.

4. I have also heard the learned Counsel appearing for the Respondents.

5. The Petitioner has filed this petition under Article 226 of the Constitution of India challenging the order passed by the College Tribunal. Obviously, the Petitioner is claiming a writ of certiorari in this petition. It is a settled law that under Article 226 of the Constitution, the High Court can issue a writ of certiorari to correct an error apparent on the face of the record. In exercise of

its jurisdiction to issue writ of certiorari the court can not reappreciate the evidence on record and reopen the findings of fact which have been recorded by the Tribunal. In so far as the present case is concerned, the College Tribunal has held that the misconduct, on the basis of which the Petitioner has been punished, has been admitted by the Petitioner. Before me also there was no attempt made to dispute that the Petitioner has committed the acts which have been termed as misconduct by the Management. The only question which was urged before me was that because the acts of the Petitioner, which according to the Management/Employer of the Petitioner amount to misconduct are in relation to the examination which was conducted by the University, therefore the Management cannot impose punishment on the basis those acts. Perusal of the provisions of the Bombay University Act as also the rules framed by the University shows that the University has framed a detailed scheme for conducting examination. Perusal of that scheme shows that the scheme makes it compulsory for a teacher working in affiliated college to work as an examiner in the examination conducted by the University. Therefore, it is clear that the basic character of the examiner appointed by

the university is that he is a teacher working either with the University or with a college affiliated to the University. When the University frames the scheme for the conduct of the examination and when it makes provisions for imposing punishment on the examiner by the University, in my opinion, it does not take away the power of the employer to punish his employee if his conduct as an examiner also amounts to misconduct within the meaning of the statute, which govern the conditions of service of the teachers working in the affiliated college. It is to be noted that in relation to a teacher who is in the service of a affiliated college and who is appointed as an examiner, the University is not his employer, therefore, the punishment to be imposed by the University that may be prescribed by the scheme framed by the University in relation to the examiner cannot prescribe a punishment of dismissal or reduction in rank or removal from services of the teacher. Therefore, maximum that such Rules can provide is that he can be debarred from being an examiner in future. But if the conduct of the teacher even while working as an examiner amounts to misconduct within the meaning of the statute, which governs his conditions of services as an employee in

an affiliated college, I do not find anything in law which prevents the Management from imposing punishment for such misconduct.

6. An employer may not be able to punish his employee for a conduct which is totally unconnected with the nature of the duties to be performed by the employee, but if there is reasonable connection between the duties as an employee and the capacity in which the act is committed the employer can definitely punish the employee. In so far as the present case is concerned, there is definite connection between the status of the Petitioner as a teacher in the college which is affiliated to the University and his status as the examiner appointed by the University. Statute 439-B lays down "A teacher shall perform his academic duties and work related to examinations as assigned". Rules framed by the University in relation to the conduct of the examiner, which have been annexed by the Petitioner at Exh.D to the petition also lays down "The work relating to the examination will be compulsory for the teaching and non-teaching staff of the college and teaching and non-teaching staff of the Directorate of Distance Education." Therefore, the

work assigned by the University as an examiner to a teacher working in an affiliated college is compulsory. Therefore, working as an examiner at the examination conducted by the University is a part and parcel of the duties of the teacher working in the affiliated college. Therefore, there is definite connection between the duties of the teacher in the affiliated college and the duties of the examiner appointed by the University. Therefore, it cannot be said that the acts which are attributed to the Petitioner as an examiner are totally unconnected with his duty as an employee of the management. It is further to be seen here that statute 439-D lays down that various major penalties can be imposed on an employee for misconduct. The statute gives an inclusive definition of the term "misconduct" and the violation of the Code of Conduct has been included in the definition of the term "misconduct". One of the Code of conduct laid down by the statute 439-B is for a teacher to do work related to examination. Therefore, if a teacher is guilty of an act of dereliction of duty as an examiner, he would be acting in violation of the Code of Conduct and if he is violating the Code of Conduct, it would amount to misconduct. At this juncture, reference can usefully

be made to a judgment of the Supreme Court in the case S.Govinda Menon Vs. Union of India and anr., AIR 1967 SC 1274. In that case the appellant was a member of the Indian Administrative Services. He was holding a post of Commissioner of Hindu Religious and Charitable Endowments. There were allegations of mis-conduct against the appellant in discharge of his duties as Commissioner. The question that was considered by the Supreme Court was whether the acts which were found to be mis-conduct attributed to the appellant were committed by him while acting in his capacity as Commissioner and therefore, the Government had no jurisdiction to take disciplinary proceedings. The Supreme Court in paragraph (6) of the judgment has observed thus:-

> ....To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for

> integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the Service.

Thus, the Supreme Court has held that if the act has reasonable connection with the nature and condition of the services and if the act reflects upon the reputation or devotion to the duties of the employee though there may not be master and servant relationship in existence between the parties when the act was committed, still the employer can take disciplinary action against the member. In the present case the acts which have been found to be mis-conduct were committed by the petitioner while working as examiner but he was appointed as examiner because he was a teacher in the affiliated college.

Therefore, there is reasonable connection between his being as examiner at the examination of the University and the status as a teacher in the affiliated college, and he has been found to be utterly negligent in performing his duties as examiner. It definitely reflects upon his reputation and devotion to his duties. In my opinion, considering that the petitioner was in service as a teacher and the high status which the teacher is holding in the Society, the observations of the Supreme Court in its judgment in the case Daya Shankar v/s. The High Court of Allahabad and ors., AIR 1987 SC 1469, are relevant. In that case the petitioner was a member of U.P. State Judicial Services. He was permitted by the High Court to appear for LL.M. examination. While he was appearing in LL.M. Examination, he was found to be using unfair means and because he was found to be using unfair means at the university examination, he was dismissed from the services by the High Court. The contention urged before the Supreme Court was that he was found to have used unfair means in the examination, that has nothing to do with his duties and the status as a judicial officer, and therefore, for that act the High Court could not have dismissed

him from the service. In this background the Supreme Court in paragraph 11 of the judgment has observed thus:-

> 11. In our opinion the conclusion reached by the Inquiry Officer that the petitioner used unfair means is fully justified. No amount of denial could take him away from the hard facts revealed. The conduct of the petitioner is undoubtedly unworthy of judicial officer. Judicial officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. The second contention urged for the petitioner also fails and is rejected.

In my opinion, the above observations of the Supreme Court apply with full force in the present case. So far as the position of a teacher in the Society is concerned, the Supreme Court has considered it in its judgment in the case of Sanchalakshri Vs. Vijaykumar Raghuvirprasad Mehta and anr., AIR 1999 SC 578. The Supreme Court in paragraph 6 of the judgment has

observed that a teacher is expected to maintain high standard of honesty and integrity in view of the position that he holds. Therefore, for any misdemeanour which has reasonable connection with the duties as a teacher the management would be justified in imposing punishment.

7. I find that the College Tribunal has passed a detailed order and has given reasons in detail for the findings recorded by it. After having gone through the findings recorded by the College Tribunal, I do not find that any material which was relevant has been excluded from consideration by the College Tribunal or that it has considered any material which was irrelevant. The findings recorded by the College Tribunal by no stretch of imagination can be termed as perverse or suffering from non-application of mind. Even the conclusions that has been reached by the College Tribunal are possible conclusions to be reached on the basis of material on record. It cannot be said that the conclusions which is reached by the College Tribunal are impossible, and therefore, in my opinion, it will not be appropriate for this court to interfere with the order passed by the College Tribunal in exercise of

its extra ordinary jurisdiction under Article 226 of the Constitution. Petition, therefore, fails and is dismissed. Rule discharged with no order as to costs.

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